

TESTIMONY OF TRACY BURRIS
CHAIRMAN OF THE OKLAHOMA INDIAN GAMING ASSOCIATION
BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS

Mr. Chairman, I am Tracy Burris, a member of the Chickasaw Nation of Oklahoma and the Chairman of the Oklahoma Indian Gaming Association. I also serve as the Gaming Commissioner for the Chickasaw Nation. Thank you for the honor of appearing before this committee today.

Mr. Chairman, I want to first of all thank you for all of your hard work and support for Indian Country. Over the years you have been a true warrior, and we appreciate your efforts on our behalf.

And Mr. Vice-Chairman, on behalf of the 21 member tribes of the OIGA, we want to congratulate you on the long-deserved Congressional Medal of Honor that President Clinton recently bestowed upon you. We in Indian Country have always considered you a hero, and it was fitting to see you and your colleagues in your division get the recognition you so rightfully deserve. We are eternally grateful for all you have done for our country, and all that you continue to do.

For over 15 years, I have been involved in Indian gaming in Oklahoma, starting as a floor worker in a tribal gaming facility, and now as a regulator for the Chickasaw Nation and an advocate for the Tribal Gaming in Oklahoma. As you know, many of the tribes in Oklahoma have worked hard to enter into meaningful Class III gaming compacts with the State of Oklahoma, but to date we have been unsuccessful.

As a result, the tribal gaming facilities in Oklahoma derive nearly all of their revenues from Class II gaming, which is limited to bingo and other games similar bingo that do not require a tribal/state compact. Tribal Governments in Oklahoma, like many other Tribal Governments across the country, largely depend on these revenues to pay for education, housing, health care and other tribal governmental programs. No other State in the country has as many Class II gaming operations as Oklahoma. Absent compacts, our survival is dependent on making bingo profitable.

Unfortunately, the meaning and parameters of Class II gaming has been a source of continuing controversy since the passage of IGRA and the NIGC's first issuance of regulations.

The IGRA defines "class II gaming" as bingo and other similar games and certain non-banking card games permitted under stated laws. It expressly permits the tribes to utilize "technologic aids" to the play of bingo and similar games. It also expressly prohibits the play of machine "facsimiles" of any game without a compact. The NIGC then promulgated regulations that defined "facsimiles" exceedingly broadly, as any game that meets the Johnson Act's definition of "gambling devices." The difference between a bingo game that utilizes technologic aids and a facsimile of a game has resulted in costly, ongoing litigation.

The confusion over the definition of Class II gaming exists not only with the tribes and their gaming commissions, but also with two of the federal agencies with jurisdiction in Indian gaming, the NIGC and the Justice Department. As you know, the Justice Department has brought actions against the tribes and their property, even when the NIGC had issued opinions stating that a game could be lawfully offered by tribes as a class II machine. T-he NIGC would take one position in a game and the Justice Department would take another.

The NIGC recognized the problem with its Class II gaming definitions and on September 17, 1997 announced the initiation of a rulemaking process that would allow the Commission to amend its definitions. Unfortunately, a rider was place on an appropriations bill to block the rulemaking process.

Because this issue has not been resolved, the Tribes and their vendors have spent millions of dollars in legal fees to defend themselves in litigation. Currently, there are at least two cases that are proceeding through the federal court system in which the heart of the question is whether the game utilizes technologic aids and, therefore Class II, or is a facsimile, and therefore Class III. In the October 23, 1998 opinion of Chief Judge Terry Kern of the U.S. District Court for the Northern District of Oklahoma, the court stated that "it (is an) absurd result that Congress would classify "paper" bingo as Class II gaming, but classify electronic bingo., as Class III gaming... A clearer statement from Congress is required if all such games are to be termed illegal." 1 A federal district court in California issued a similar decision over the same game. The Tribes won in both federal district courts and yet the United States continues to appeal this matter. This, of course, is creating even greater confusion and requiring the Tribes to spend much needed revenues on legal fees - instead of on our people.

Mr. Chairman, and Members of the Committee, this confusion and conflict over the definition and parameters of Class II gaming needs to be addressed immediately. We respectfully request that the Committee pass legislation to resolve this issue or direct the NIGC to enter into a rulemaking process to bring greater clarity to Class II definition.

Again, thank you for the opportunity to appear before you, and I would like to take this time to answer any questions you may have.